

repacked and dispensed without a physician's prescription, which acts resulted in the repackaged drugs being misbranded.

Wells B. Kilgore was charged with causing the acts of repacking and dispensing in each of the eight counts of the information, and Weldon R. Rehburg was joined as a defendant in three counts.

**NATURE OF CHARGE:** Misbranding, Section 502 (b) (2), the repackaged drugs failed to bear labels containing an accurate statement of the quantity of the contents.

Further misbranding, Section 502 (d), the repackaged drugs contained chemical derivatives of barbituric acid, which derivatives have been found to be, and by regulations designated as, habit forming; and the labels of the repackaged drugs failed to bear the name, and quantity or proportion of each derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Further misbranding, Section 502 (f) (1), the labeling of the repackaged drugs failed to bear adequate directions for use.

**DISPOSITION:** Pleas of not guilty were entered on behalf of the defendants on February 12, 1952. A motion for dismissal of the information was filed on behalf of the defendants on or about February 18, 1952. On August 1, 1952, the court entered an order granting the motion to dismiss and discharging the defendants as not guilty, based upon the same reasons as set forth in the order of dismissal which was entered in the case reported in the following notice of judgment, No. 3848.

**3848. Alleged misbranding of Seconal Sodium capsules and pentobarbital sodium capsules.** U. S. v. Forest C. Pomroy (Pomroy's Drug Store). Plea of guilty. Motion for dismissal of the information granted and defendants discharged as not guilty. (F. D. C. No. 31271. Sample Nos. 93084-K, 93089-K, 93093-K, 93099-K, 93203-K, 93210-K, 93212-K, 93221-K, 93222-K, 93238-K.)

**INFORMATION FILED:** January 8, 1952, Southern District of Florida, against Webb's City, Inc., St. Petersburg, Fla., and Charles L. Fox, manager of the prescription department of the corporation.

**ALLEGED VIOLATION:** Between the approximate dates of October 24 and December 19, 1950, while quantities of *Seconal Sodium capsules* and *pentobarbital sodium capsules* were being held for sale at Webb's City, Inc., after shipment in interstate commerce, the defendants caused various quantities of the drugs to be repacked and dispensed without a physician's prescription, which acts resulted in the repackaged drugs being misbranded.

**NATURE OF CHARGE:** Misbranding, Section 502 (b) (2), the repackaged drugs failed to bear labels containing an accurate statement of the quantity of the contents.

Further misbranding, Section 502 (d), the repackaged drugs contained chemical derivatives of barbituric acid, which derivatives have been found to be, and by regulations designated as, habit forming; and the labels of the repackaged drugs failed to bear the name, and quantity or proportion of each derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Further misbranding, Section 502 (f) (1), the labeling of the repackaged drugs failed to bear adequate directions for use.

**DISPOSITION:** Pleas of not guilty were entered on behalf of the defendants on or about February 12, 1952, and a motion for dismissal of the information was filed on behalf of the defendants on or about February 18, 1952. On August 1, 1952, the court entered the following order granting the motion:

**BARKER, District Judge:** "This cause came on to be heard upon the Motion to Dismiss filed herein by the defendants, and the Court having heard the argument of counsel, and counsel for the defendants and for the United States of America having stipulated before the Court that the facts in support of the offense sought to be charged in each count consist of refilling prescriptions for certain drugs by the defendants when there was a physician's prescription on file with the defendants;

"And the Court being advised that refilling of such prescriptions was a practice of long standing with druggists, and that for many years the administrator of the Federal Food, Drugs and Cosmetics Act did not seek to restrict refills of prescriptions and after it sought to do so, the Congress adopted a clarifying and definitive amendment, and the Court being of the opinion that facts supporting the offense sought to be charged, viz refilling prescriptions, do not constitute a criminal offense adequately and definitely spelled out in the statute and regulations as is required for a criminal prosecution;

"It is thereupon ordered that the said motion is hereby granted and the information is hereby dismissed, and the defendants are hereby released from process and discharged as not guilty.

"Done and ordered this 1st day of August A. D., 1952."

**3849. Alleged misbranding of Seconal Sodium capsules and pentobarbital sodium capsules. U. S. v. Forest C. Pomeroy (Pomeroy's Drug Store). Plea of not guilty. Motion granted for dismissal of the information and defendant discharged as not guilty. (F. D. C. No. 31273. Sample Nos. 93083-K, 93088-K, 93092-K, 93098-K, 93202-K, 93209-K, 93214-K, 93230-K, 93233-K, 93236-K.)**

**INFORMATION FILED:** January 8, 1952, Southern District of Florida, against Forest C. Pomeroy, trading as Pomeroy's Drug Store, St. Petersburg, Fla.

**ALLEGED VIOLATION:** Between the approximate dates of October 24 and December 18, 1950, while a number of *Seconal Sodium capsules* and *pentobarbital sodium capsules*, were being held for sale at Pomeroy's Drug Store after shipment in interstate commerce, the defendant caused various quantities of such drugs to be repacked and dispensed without a physician's prescription, which acts resulted in the repackaged drugs being misbranded.

**NATURE OF CHARGE:** Misbranding, Section 502 (b) (2), the repackaged drugs failed to bear labels containing an accurate statement of the quantity of the contents.

Further misbranding, Section 502 (d), the repackaged drugs contained chemical derivatives of barbituric acid, which derivatives have been found to be, and by regulations designated as, habit forming; and the labels of the repackaged drugs failed to bear the name, and quantity or proportion of each derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Further misbranding, Section 502 (f) (1), the labeling of the repackaged drugs failed to bear adequate directions for use.

**DISPOSITION:** On February 12, 1952, a plea of not guilty was entered on behalf of the defendant, and on or about February 18, 1952, a motion for dismissal of the information was filed on behalf of the defendant. On August 1, 1952, the court entered an order granting the motion to dismiss and discharging the defendant as not guilty, based upon the same reasons as set forth in the